

October 12, 2000

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: Department of Development and Environmental Services File No. **L99TY403**

**AQUA BARN**  
Rezone Request

Location: 15227 Southeast Renton-Maple Valley Road

Applicant: Angus and Janette Carr, *represented by*  
**Robert Johns**, Attorney at Law  
Johns Monroe Mitsunaga  
Cypress Building, Suite 102  
1500 – 114<sup>th</sup> Avenue SE  
Bellevue, WA 98004  
Telephone: (425) 451-2812 Facsimile: (425) 451-2818

King County: Department of Development and Environmental Services,  
Land Use Services Division, Current Planning Section, *represented by*  
**Justin Abbott and Karen Scharer**  
900 Oakesdale Avenue SW  
Renton, WA 98055-1219  
Telephone: (206) 296-0639 Facsimile: (206) 296-0186

**SUMMARY OF RECOMMENDATIONS:**

|  |   |
|--|---|
| Department's Preliminary Recommendation: | Approve, subject to conditions            |
| Department's Final Recommendation:       | Approve, subject to conditions (modified) |
| Examiner's Decision:                     | Approve, subject to conditions (modified) |

**PRELIMINARY MATTERS:**

|                                    |                   |
|------------------------------------|-------------------|
| Application or petition submitted: | October 27, 1999  |
| Complete application:              | November 18, 1999 |

## EXAMINER PROCEEDINGS:

Hearing Opened: September 14, 2000  
Hearing Closed: September 26, 2000

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

## ISSUES/TOPICS ADDRESSED:

- Arterial road intersections
- Comprehensive plan map amendments
- Comprehensive plan policy application
- Density (multi-family)
- Impact fees
- Intersection standards
- Landmarks
- Maximum density
- Park and recreation impacts
- Recreation areas and fees
- Road improvements
- Road capacity
- Road standards
- Traffic distribution
- Traffic impacts
- Interlocal agreement

## SUMMARY:

Approves reclassification of 21 acres from R-6 PSO (potential R-12 PSO) to R-12 PSO, subject to conditions.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS:

1. The property owners are Angus and Janette Carr. The developer is Polygon Northwest. These parties, represented by Robert Johns, are referred to hereinafter interchangeably as the "Applicant" or "Aqua Barn." The Applicant seeks to reclassify approximately 21 acres from R-6 PSO (potential R-12 PSO) to R-12 PSO. The P-suffix refers to site plan approval criteria which apply to this property. The SO-suffix refers to a Special District Overlay which also requires specific measures and environmental protective design standards. The requested reclassification will

retain all existing/effective P-suffix and Special District overlay (SO) conditions. The Applicant requests this reclassification, or “actualization” of an existing potential zone, in order to develop a 254 dwelling unit multi-family complex comprising several buildings, with ancillary recreation area and parking consistent with code requirements. A conceptual map of the rezone area is attached to Exhibit No.2 (addendum to preliminary report to the Hearing Examiner, dated September 14, 2000).

For purposes of public hearing review, the proposal initially came to this office consolidated with a preliminary short plat application. Examiner’s procedures call for consolidation of simultaneous actions as a means of reducing review complications and achieving judicial economy. In this case, however, the Department and Applicant determined that combining the short plat review with the rezone review would achieve the opposite result because the short plat administrative review was not sufficiently complete to be heard. Responding to the Department’s and Applicant’s request, the Examiner, having determined that neither the rezone nor the short plat is necessarily dependent upon the other, granted the request to separate these two reviews. The preliminary short plat review will continue to be considered administratively. There is no code provision that requires public hearing review of the short plat application once this “deconsolidation” has occurred.

## 2. **General Findings.**

|                            |   |
|----------------------------|---|
| Applicant:                 | Angus & Janette Carr<br>15227 SE Renton-Maple Valley Rd.<br>Renton, WA 98055  |
| Agent:                     | DBM Consulting Engineers<br>502 – 16 <sup>th</sup> St. NE Suite 312<br>Auburn, WA 98002<br>Phone: (253) 887-0924  |
| Location:                  | Located within the SW ¼ of Section 23, Township 23 North, Range 5 East, W.M., in King County, Washington. Described as Assessor’s parcel number 232305-9185. The property address is 15277 SE Renton-Maple Valley Road, Renton. |
| Rezone Acreage:            | 21 acres  |
| Short Plat Acreage:        | 32.58 acres   |
| Zoning:                    | Existing R-6 PSO (Potential R-12 PSO) to Proposed R-12 PSO  |
| Number of Lots:            | 4   |
| Proposed Uses:             | Multi-family residential  |
| Sewage Disposal:           | Cedar River Water & Sewer District  |
| Water Supply:              | Cedar River Water & Sewer District  |
| Fire District:             | King County Fire District #25   |
| School District:           | Renton #403   |
| Complete Application Date: | November 18, 1999   |

|                          |   |
|--------------------------|---|
| SEPA File Number:        | L99TY403 & L99S3019                         |
| Threshold Determination: | Mitigated Determination of Non-significance |
| Date of Issuance:        | July 28, 2000                               |
| King County Permits:     | Rezone L99TY403                             |
| Permit/SEPA Contact:     | Justin Abbott, Planner II—(206) 296-7059    |
| Community Plan:          | Soos Creek                                  |
| Drainage Subbasin:       | Lower Cedar River                           |
| Section/Township/Range:  | 23-23-05                                    |
| Parcel Number:           | 232305-9185                                 |

The subject property is located south of the Renton-Maple Valley Highway (SR 169) east of 152<sup>nd</sup> Avenue Southeast, approximately 1,250 feet east from Renton city limits. In addition to the Maple Valley Highway on the north, the property is bounded by the Emerald Crest Residential Park (manufactured homes) on the east, and Renton Assembly of God (with apartment parking lot) to the west. Protected wooded steep slopes comprise a portion of the ownership along the south boundary, most of which is not contained in the subject reclassification request. In addition to an historic residence (“Captain Denny House”; see Recommended Condition No. 4.e on page 6 of this report) the subject property is developed as a recreational vehicle and mobile home park, restaurant, swimming pool, horse barn and stables, track, playground, dance hall, two residences and some retail space. More than 100 RV and/or mobile homes are currently located on the property and are connected to the Cedar River Water and Sewer District.

3. **State Environmental Policy Act.** On July 28, 2000, the Department issued a (mitigated) threshold determination of non-significance (MDNS). Based on the Department’s review of the various environmental documents of record regarding this application, the Department published its conclusion that the proposal would not cause probable significant adverse impacts upon the environment, provided that certain mitigation measures were achieved. Therefore, an environmental impact statement is not required. No agency, tribe, person or other entity appealed that determination during the 21 day appeal period. The MDNS requires of the Applicant the following:
- Proponent shall design and install a traffic control signal at the SR 169/152<sup>nd</sup> Avenue Southeast intersection. If the King County (Elliot bridge and roadway alignment) Project No. 400588 is still being considered, the signal shall be designed and constructed to facilitate the future north leg of the intersection.
  - Channelization, illumination and signalization plans shall be prepared and implemented in accordance with the Washington State Department of Transportation rules and regulations by the proponent.
  - The proponent shall improve 152<sup>nd</sup> Avenue Southeast, per King County Road Standards, to allow 3 lanes of travel for a minimum of 150 feet from the intersection.

The Applicant accepts these mitigation measures and incorporates them in the project proposal.

4. **Department Recommendation.** The Department recommends that the requested reclassification—from R-6 PSO (potential R-12 PSO) to R-12 PSO—be approved subject to the following post-effective conditions:
- a. The Applicant shall dedicate right-of-way as needed to the Washington State Department of Transportation, specifically for transit service improvements, as outlined in the letter dated August 31, 2000 from King County Metro Transit (Exhibit No. 27). This required dedication must be provided prior to any segregation of the property.
  - b. Mitigation measures from the threshold determination (MDNS), issued on July 28, 2000, shall apply as conditions to the subsequent commercial building permits. Mitigation measures are as follows:
    - The proponent shall design and install a traffic control signal at the State Route 169/152<sup>nd</sup> Avenue SE intersection. If the King County bridge and roadway realignment project (#400588) is still being considered, the signal shall be designed and constructed to facilitate the future north leg of the intersection.
    - Channelization, illumination, and signalization plans shall be prepared and implemented, in accordance with the Washington State Department of Transportation rules and regulations, by the proponent.
    - The proponent shall improve 152<sup>nd</sup> Avenue SE, per King County Road Standards, to allow three lanes of travel for a minimum of 150-feet from the intersection.
  - c. The Applicant shall coordinate with the Renton School District in providing adequate school bus access to serve the development of R-12 zoned property by providing one of the following improvements, which are listed in order of preference:
    - Providing a school bus pull out on SR 169 to be implemented as part of the commercial building permits for development of this site. Such a pull out may be combined with proposed Metro Transit service improvements;
    - Providing a loop roadway/driveway (minimum of 24 feet) through the development; or,
    - Improving the existing cul-de-sac at the terminus of 152<sup>nd</sup> Avenue SE to allow for the turning radius of the largest school buses, approximately 55-60-foot outer radius.

This condition shall be implemented prior to occupancy of any dwelling units on the site.
  - d. Transit service improvements, as outlined in the letter dated August 31, 2000 from King County Metro Transit (Exhibit No. 27) shall be required as part of issuance of the commercial building permits for multi-family development.

- e. The Captain Denny House shall be documented in accordance with the Historic Preservation Officer, prior to any site disturbance. The historic building(s) shall either:
  - a) be relocated by the owner to another site, or
  - b) the historic building(s) shall be advertised for sale, for at least a week starting at least 60 days, for a nominal sum and that the costs of demolition and disposal be donated to the purchasing party, prior to relocation/demolition. Provide all documentation (photographs, costs of demolition and disposal, advertisement, new location, etc.) to the Officer prior to relocation/demolition. This condition shall be carried over and applied to any future building permit, demolition permit, and/or clearing and grading permits.
- f. Washington State Department of Transportation (WSDOT) and the City of Renton have identified State Route 169 as a HAC (High Accident Corridor) between MP 22.00 and MP 25.00. The City of Renton, with financial assistance from the WSDOT and King County, has adopted a transportation improvement project (the WSDOT project is referenced in the Applicant's May 11, 2000 revised traffic report) to improve operations along this portion of the State Route. The developer shall contribute their proportionate share to this project prior to issuance of any building permits, based upon worst case AM or PM peak hour volumes at the I-405 northbound ramps and net new peak hour trips from the site—of the costs identified for Project #12 (SR 169 HOV—140<sup>th</sup> Way SE to SR 900) in the City's 6-year Transportation Improvement Plan adopted July 10, 2000.
- g. Retain the SO-22 special district overlay (SO) on the subject property.
- h. Apply the area wide P-suffix condition of SC-P19a on the subject property.
- i. Development shall be limited to a total of 250 apartment (multi-family) dwelling units on the R-12 zoned property.

These conditions of approval recommended by the Department differ from the Department's original recommendation as stated in the Department's preliminary report (addendum Exhibit No. 2) in the following ways:

- The requirement to dedicate right-of-way to accommodate a Metro Transit pull-out was originally recommended as a pre-condition to rezoning. It is now a pre-condition to short subdivision. See Recommended Condition No. 4.a., above.
- Rather than recommend that the Applicant "shall enter into a voluntary settlement agreement with the City of Renton" regarding the SR 169/I-405 intersection, the final recommendation would require the Applicant to "contribute their proportionate share to this project." See Recommended Condition No. 4.f, above.
- Rather than base a proportional impact contribution to SR 169/I-405 based upon "either AM or PM peak hour volumes" as originally recommended, the Department now recommends that the proportional contribution from the Applicant be based upon "*worst case* AM or PM peak hour volumes." See Recommended Condition No. 4.f, above.
- The Department in its final recommendation, suggests adding the limitation on maximum

density—to 250 dwelling units.

Finally, DDES opposes the Applicant's offer to pay Renton a fee-in-lieu of County-required recreational open space within the development. See Finding Nos. 5 and 10, below.

5. **Applicant's Response.** The Applicant accepts the Department's final recommendation as described in Finding No. 4, preceding. In addition, the Applicant offers to pay the City of Renton \$25,025 based upon the assumption that the proposed development (which will follow the subject reclassification) would contribute an additional 1.1% of the existing traffic load at the SR 169/I-405 intersection. This topic is discussed further in Finding No. 8, below.
6. **City of Renton.** The City of Renton administration opposes the requested reclassification and subsequent planned development. In addition, several property owners either oppose or express concern about various project aspects. The issues and concerns raised through the public hearing review are considered in Finding Nos. 7 through 14, below.
7. **Conflicting Comprehensive Plans.** The Renton comprehensive plan (land use element) shows the subject property as "rural residential."<sup>1</sup> There is a discrepancy of 67 dwelling units between Renton and King County land use strategies as they affect this property. However, the proposed reclassification to R-12 density would represent an additional development density increase of 100 units. Renton opposes the reclassification, arguing that the additional 100 units cannot be supported by existing public infrastructure and services. The existing infrastructure capacity, the City argues, is committed to serve zoned capacity for growth that is already expected to occur within the City of Renton and the unincorporated area within the "potential annexation area" (within which the subject property lies). In a sense, then, this argument suggests that the requested reclassification and concomitant proposed multi-family development of 254 units total will "rob" infrastructure enjoyment from the lower density designated surrounding areas. This notion is elaborated upon in Finding Nos. 8 and 10, addressing roadway and intersection capacities and parks.

The City argues further that the requested reclassification and subsequent multi-family development is inconsistent with the King County County-wide Planning Policies (CPP's) which direct growth to urban centers; that it is inconsistent with King County Comprehensive Plan Policies implementing the CPP's; and, that it is inconsistent with the City of Renton growth phasing strategies and comprehensive plan land use map.

The Applicant responds by observing that the County-wide Planning Policies do not apply to individual site-specific applications. The Applicant notes further that the City of Renton itself does not apply the County-wide planning policies to permit applications in the city, and, that the CPP apply only to the development of comprehensive plans, not to site applications. Nonetheless, the Applicant argues, CPP LU-28 support the reclassification. LU-28 says, in essence that growth should be directed first to urban centers and urbanizing areas with

infrastructure, then to areas where infrastructure can be added. The subject property is supported by public water and sewer.

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<sup>1</sup> The maximum density Renton zoning allows within this land use designation is R-5, which would allow 92 dwelling units. The subject property and vicinity are located within the UGA. King County regards R-5 as urban density.

CPP LU-33 requires that the site be developed in accordance with the City's growth phasing plan. However, it indicates that such plans need to be developed and implemented through an interlocal agreement between the County and the City. No such interlocal agreement exists.<sup>2</sup>

8. **Traffic; SR 169 at I-405.** DDES did not require, and the Applicant did not provide, a traffic analysis of the I-405/SR 169 intersection. However, the conclusion may be extrapolated from the traffic analysis prepared by Transportation Planning & Engineering, Inc. (Exhibit No. 18; Figure 6) that approximately 35 vehicles pass eastbound from I-405 through that intersection during the PM peak hour. Unfortunately, the study did not include AM peak hour analysis, the period during which the City argues traffic conditions are worst.

The intersection currently functions at Level Of Service (LOS)-F conditions during the AM peak period. Analysis shows that the critical westbound movements during that period experience average vehicle delays exceeding 60 seconds. Traffic queues, according to the City, extend eastward along SR 169 for one-half mile or further during the AM peak period. The conditions are so severe, says the City, that the entire intersection operates at LOS-F. The City of Renton traffic report, dated 1997 (Exhibit No. 34b; Attachment 2) indicates that the SR 169 corridor contains a "significant number of commuters who reside east of Renton." The subject property is located approximately 1,250 feet east from the easternmost Renton boundary (Exhibit No. 24; GIS map depicting potential annexation area and City boundaries). In that same report states:

A review of State and City accident records for the past 3-year period identified 109 accidents at Maple Valley Highway at the I-405 northbound and eastbound SR 169 ramps, including 63 PDO and 46 injury accidents, resulting in 67 injuries. During this same period, there were 56 accidents at the intersection of Maple Valley Highway and 140<sup>th</sup> Avenue Southeast, including 31 PDO and 25 injury accidents resulting in 58 injuries.

In response, the Applicant, based on calculations that the Aqua Barn rezone would add only 1.1%<sup>3</sup> to the current AM peak period traffic at this location, has offered \$25,000 as a mitigation payment toward the estimated \$2,275,000 cost of upgrading the SR 169 on-ramp at I-405. DDES appears to agree that such a payment would represent a proportional fair share contribution, but does not include it in its recommendation due to the absence of an interlocal agreement. TP&E

recommends to its client, Polygon Northwest Company (the Applicant) that "contributing \$36,000 toward this project be made as a good faith gesture."

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2. City and County witnesses disagree as to the reason for the absence of an interlocal agreement several years past adoption of the Growth Management Act. The City claims that the County has resisted development of an interlocal agreement; County witnesses imply the same of the City.

3. This calculation may require further review. It is based upon 100 units at .51 vehicle trips per unit. However, 250 units are proposed. Further, the resulting number of "project trips" used to determine the 1.1% *pro rata* share estimate is only 28 vehicles. Yet the Applicant's consultants own earlier estimate of westbound traffic to be generated is substantially larger at 35 units—even though objective measurable observations indicate that AM peaks at this intersection are worse than PM peaks. The calculations of concern discussed here are on page 2 of Exhibit No. 51, a letter from Transportation Planning & Engineering (TPE) to Applicant Polygon Northwest Company. The Applicant suggests that the mitigation payment should not be for the full impact of the 250 dwelling unit development, but rather, that the mitigation payment should be limited to the number of units that the requested reclassification would add to the existing development potential of the property—100 units.



According to TP&E, the project cost is estimated at \$3.3 million. Presently, Washington State Department of Transportation (WSDOT) and King County have committed \$750,000 and \$275,000, respectively, for the cost of the project. Thus, the project is not yet fully funded.

9. **Elliott Bridge; Fire Protection.** The Elliott Bridge, at 149<sup>th</sup> Avenue Southeast, approximately 1,500 feet northwest from the subject property, connects the Petrovitsky-Maple Valley Highway and Briarwood areas. The Elliott Bridge, crossing the City Cedar River, provides access to neighborhoods surrounding the Maplewood Golf Course as well as Petrovitsky, even though they are not all within Renton City limits. The City of Renton Fire Department provides a 4 to 5 minute response time to this area.

Regarding the proposed reclassification, the City of Renton Fire Department expressed its concerns:

The status of Elliott Bridge is of grave concern to the Renton Fire Department. The current closure prohibits access of any of our emergency vehicles at this time. In addition, upon completion of the repair, our engine and ladder vehicles will still be restricted from access, as they will greatly exceed the new weight limit of 13 to 36 tons. The detour necessary to bypass Elliott Bridge adds 6.5 miles to any response time that requires crossing the bridge.

The Renton Fire Department concludes that, “this situation adversely affects our ability to provide a reasonable level of service to citizens in this area and is unacceptable.” DDES responds, referring to Exhibit No. 47 (a map depicting various fire stations in the southeast King County vicinity) that other service alternatives are available using other fire stations and districts. The hearing record contains no analysis regarding the feasibility of this assertion (other than the Exhibit No. 47 map) and no indication as to whether the affected fire departments/districts maintain the requisite mutual aid agreement(s).

10. **Parks and Recreation.** The Cedar River Trail is located directly north from the project area across SR 169. The City argues that future residents of the subject property will enjoy access to the Cedar River Trail and SR 169 which, in turn, will provide access to 15 park, recreation, senior and leisure activity centers. The City owned and operated public services and facilities are scaled, the City says, to support the population anticipated in the City’s comprehensive plan. Thus, the Polygon Northwest proposal to double the density of the subject property will overburden those recreational facilities, the City argues.

DDES and the Applicant respond that, consistent with County code, the Applicant will be providing on-site recreational area, including the construction of recreational facilities. The Applicant has indicated that it “would be willing to consider” an agreement whereby the project would pay a partial fee-in-lieu to Renton instead of providing all of the on-site recreational space required by KCC 21A.14.180. DDES opposes that idea, indicating that a development of the size and density considered here requires actual recreational space on site.

11. **Underground Storage Tanks (USTs).** Exhibit No. 15, the “Phase 1 Environmental Site

Assessment Report” indicates that four underground storage tanks are located on the subject property. The preparing consultant, SECOR International, recommends that “Further investigation is warranted to assess soil and groundwater in the vicinity of the USTs.” (Exhibit No. 15, Section 5.3.4).

12. **Reclassification Review Standards.** The following code-established criteria must be satisfied to approve the reclassification:

A. **KCC 20.24.190.** Both sections A and B of this code provision titled “Additional Examiner’s Findings [required to approve reclassification]” are cited by the Applicant.

- a. The property is potentially zoned for the reclassification being requested and conditions have been met which indicate the reclassification is appropriate; or
- b. An adopted community plan or area zoning specifies that the property shall be subsequently considered through an individual reclassification; ...

KCC 20.24.190.A is slightly problematic in that the potential classification adopted by the Council does not specify any “conditions that need to be met which would indicate that the reclassification is appropriate.” KCC 20.24.190.B, however, does indeed appear to apply. Martin Durkin Jr., the only person to testify in this case who actually attended the County Council reclassification of the subject property, states that the Council’s purpose in applying the “potential” R-12 classification to the Aqua Barn Ranch constituted no more than the desire to have the impacts of reclassification assessed in greater detail than could be accomplished through legislative area-wide zoning and comprehensive plan amendment. Mr. Durkin’s testimony constitutes the preponderance of evidence on this point.<sup>4</sup>

B. **KCC 21A.04.170.** This Zoning Code section establishes the purpose of the potential zone as follows:

....to designate properties potentially suitable for future changes in land uses or densities once additional infrastructure, project phasing or site-specific public review has been accomplished.

Emphasizing the term “additional infrastructure” the City sees the requested reclassification as inconsistent with KCC 21A.04.170. Emphasizing the phrase “or site-specific public review has been accomplished,” the Applicant and DDES contend that this code section supports the reclassification application.

C. **KCC 20.24.180.** This code section requires the Examiner to enter findings of fact and conclusions that indicate the manner in which the proposed action is “consistent with, carries out and helps implement” applicable laws, regulations, policies and objectives of the State and King County; and, that the recommendation or decision will not be

unreasonably compatible with or detrimental to affected properties and the general

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<sup>4</sup> The hearing record shows also that the City of Renton opposed the R-12 classification at the time that it was considered by the Council.

public. See Conclusion Nos. 1 through 4, below.

- D. **KCC 21A.02.030; KCC 21A.04.080.B.3.** KCC 21A.04.080.B.3 indicates that the R-12 through R-48 zones are appropriate in urban areas, urban or community activity centers, urban neighborhood centers or rural towns that are served *at the time of development* by adequate public sewers, water supply, roads and other needed public facilities and services. The City argues that the requisite public facilities and services are not available for the reasons discussed elsewhere in these findings. DDES concludes otherwise for the reasons discussed elsewhere in these findings.

KCC 21A.02.030 establishes the overall purpose of the King County Zoning Code. In particular, KCC 21A.02.030.E indicates that a general purpose of the Zoning Code is, “to provide for adequate public facilities and services in conjunction with development.” The City argues that, due to the SR 169/I-405 intersection situation, due to the absence of park and recreation (on the City’s part) to accommodate such population increase and due to the lack of sufficient fire service response time (projected), the requested reclassification to R-12 fails to meet the general purpose of the King County Zoning Code. The Department and Applicant argue to the contrary. The Applicant argues that it cannot be held “hostage” due to the inability of the City and County to reach interlocal agreement regarding GMA implementation. The Department and the Applicant indicate that, consistent with County code, the Applicant has agreed to provide the necessary impact mitigation for streets, recreation, schools and so on.

13. **Comprehensive Planning Policy Consistency.** Between them, the City and DDES cite 18 policies from the 1994 King County Comprehensive Plan. In addition, the City cites 2 County-wide Planning Policies (CPP). The City and DDES cite 6 of the same policies among those 18 policies, but disagree as to their usefulness, applicability or support of the proposed action.
- A. **Policy U-101.** This policy encourages a safe, healthy and diverse community consisting of affordable housing (among other things). The City argues that the proposed Polygon Northwest development contains no affordable housing program. DDES states, in part, that, “the community will consist of a residential subdivision that contains affordable housing...”. The Applicant cites County-wide job creation statistics which are presently outrunning housing development, thereby pressuring housing prices upward. The City counters that the job creation rate and housing development rate within the Renton area roughly correspond and, in fact, are improving with respect to each other. The Applicant replies to this argument that the County must be concerned not with local pockets (such as Renton) of job creation and housing development, but rather, market-wide (and therefore County-wide) rates.
- B. **Policy U-201.** This policy declares the Urban Growth Area (UGA) designation shown on the official land use map “includes enough land to provide the capacity to accommodate growth expected over the period 1992 to 2012.” Renton argues that this policy declaration does not support the proposed reclassification. However, no expansion of the UGA is contemplated in this case.
- C. **Policy U-203.** DDES suggests that this policy, which encourages “most population and

employment growth” to locate in the contiguous UGA, “especially in cities and their potential annexation areas,” supports the proposed rezone. The record contains no response from other parties.

- D. **Policy U-208.** This policy requires King County to provide adequate land capacity for growth in the urban unincorporated area. The debate regarding this policy parallels that described in subparagraph A, above.
- E. **Policy U-502.** This policy establishes a goal to achieve “over the next 20 years” an average zoning density of at least 7 to 8 homes per acre in the UGA through a mix of densities and housing types. City of Renton argues that the existing zoning of R-6 is closer to this average than R-12. It also argues that the effects of the policy cannot be measured and that, therefore, it should not be used to justify any increase in zoning density. The subject property and vicinity is designated by the King County Comprehensive Plan land use map as “Urban Residential, 4 to 12 dwelling units per acre.” Thus, DDES concludes that the reclassification is compatible with the King County goal of achieving an average zoning density of at least 7 to 8 homes per acre in the UGA.
- F. **Policy U-515.** Policy U-515 encourages residential neighborhood design to “preserve historic and natural characteristics and neighborhood neatness, while, among other things, reducing the impact of motorized transportation.” Noting that the property is bounded by a single-family manufactured home park on one side and a “suburban style church” on the other, the proposed development will not “preserve neighborhood characteristics.” DDES disagrees, noting that the property is in an urban setting and will remain that way. The impact of motorized transportation will be reduced, DDES says, because the project will be close to recreational, service and employment areas. Regarding recreation, the City has argued (as noted above) that this proximity to City recreational facilities will impose an unmitigated impact. The proximity to “employment areas” may be questioned to the extent that—as observed elsewhere in these findings—a significant proportion of the AM peak hour westbound traffic queuing at the SR 169/I-405 intersection are identified by transportation analysts as coming from “east of Renton.”
- G. **Policy U-517.** This policy encourages “King County zoning and subdivision regulations” to facilitate the creation of usable open space, community facilities and non-motorized access, while also encouraging pedestrian mobility. The City correctly observes that this project is not really a “mixed use development,” as has been suggested by DDES. Rather, with the information presently available, it appears to be a road side neighborhood business strip with apartments behind. In any event, this policy may be found irrelevant because it provides direction to writing zoning and subdivision regulations, not to reviewing individual site developments or rezones.
- H. **Policy U-523.** U-523 authorizes the County to coordinate parkland dedication requirements with cities so that acquired [park] sites meet city park standards in potential annexation areas. Cedar River Trail parklands, acquired substantially by King

County, are located directly north of the subject property. While this policy may

illustrate that parkland acquisition has occurred appropriately in the vicinity of the subject property, it does not bear directly upon the merits of the reclassification request.

- I. **Policy U-601.** Policy U-601 calls for King County to encourage development within existing unincorporated activity centers to meet the needs of the regional economy to provide employment, housing, shopping, services and leisure time amenities. DDES staff testifies that the neighborhood business center zoning abutting the north boundary of the requested R-12 parcel qualifies as an unincorporated activity center. Thus, DDES argues, that the proposed reclassification implements Policy U-601. See, also, the discussion of neighborhood business centers following below.
- J. **Neighborhood Business Center Polices.** Unincorporated activity centers should have a mix of uses according to Policy U-604. Although the proposed development is not a “mixed use development” it certainly adds new compatible uses to the unincorporated neighborhood business center. The City of Renton, however, argues that the site is not mapped as an “unincorporated activity center.” Ordinance No. 12531, adopted by the King County Council November 25, 1996 calls the site a “neighborhood business center.” Classifying the abutting property (and neighborhood business), the Council declared its action consistent with Comprehensive Plan Policies U-624, U-625, U-626, U-627 and U-628. These policies govern the location of neighborhood business centers. Policy U-625 specifically refers to “Aqua Barn.” The explanatory text accompanying Policy U-625 encourages combining residential and commercial uses in such locations. Policy U-626 indicates that “neighborhood business centers may include mixed residences/residential development with densities up to 12 homes per acre” when convenient to a secondary arterial. The policy further indicates densities of 12 to 18 homes per acre are appropriate when convenient to a major arterial (such as SR 169).
- K. **Policies U-204 and U-301.** These policies encourage County support of the development of urban centers located in cities. Policy U-301 further encourages King County to “work with the cities” to focus County-wide growth within their boundaries, to support annexations within the UGA “when consistent with the King County Comprehensive Plan and County-wide Planning Policies.”

A potential annexation area is an area in unincorporated King County adjacent to a city that is expected to annex to the city and to which that city will be expected to provide services and utilities within the next two decades. Cities must propose potential annexation area boundaries and the County officially designates them. Unfortunately, as noted elsewhere in these findings, neither the City nor the County have successfully coordinated with each others’ planning efforts.

The City argues that Policies U-204 and U-301 support its position. However, Policy U-301 limits the King County support of city planning to only those growth boundaries and annexations that are “consistent with the King County Comprehensive Plan and County-wide Planning Policies.”

- L. **County-wide Planning Policies (CPP).** The parties disagree as to the applicability of

CPPs. The City cites CPP LU-28 and LU-33 as County-wide Planning Policies that work against the proposed reclassification. CPP LU-33, for instance, states, in part, “land within a city’s potential annexation area shall be developed according to that city’s and the King County’s growth phasing plans.” In this case, the City contends, the development of this potential city annexation area totally ignores the City’s growth phasing plans. CPP LU-28 sets a priority hierarchy for urbanization dependent upon infrastructure capacity.

The Applicant argues that CPPs are irrelevant to individual site reclassification and development reviews; that CPPs are written and adopted to guide comprehensive plan development.

14. **Notice to City.** The City contends that it was not properly notified of the proposed action and therefore unable to properly prepare its case before the Examiner. In response, DDES submits Exhibit Nos. 42 through 44, copies of “party of record” lists, notice of SEPA threshold determination, notice of application, and notice of recommendation and hearing. These documents constitute a preponderance of the evidence which supports the finding that the City indeed timely received the legally required notices.
15. **Department Reports Adopted.** Except as noted above, the facts and analysis contained in the Land Use Services Division Preliminary Reports dated August 31, 2000 and September 14, 2000 (Exhibit Nos. 1 and 2, respectively) are correct and are incorporated here by reference. A copy of these Land Use Services Division reports will be attached to those copies of the examiner's report which are submitted to the King County Council.
16. **Conclusions Adopted as Findings.** Any portion of any of the following conclusions that may be construed as a finding is incorporated here by this reference.

#### CONCLUSIONS:

1. The requested reclassification complies with KCC 21A.24.190.B. The 1996 Comprehensive Plan amendments (superseding Community Plans) specified that the subject property would be subsequently considered through an individual reclassification. This is it. KCC 20.24.190.A also provides support for the requested reclassification because the property is potentially zoned for the classification requested. When the Council classified the subject property “potential R-12” it did not indicate the changes or circumstances under which reclassification would become appropriate, as suggested by KCC 20.24.190. However, the preponderance of evidence (Mr. Durkin’s testimony) indicates that the Council knew very well its intention. It intended to use the potential zone to assure site-specific review. This is that review.
2. The reclassification and anticipated subsequent multi-family development will not be unreasonably incompatible with the manufactured housing residential park or the church parking lot that abut the subject property. Located adjacent to neighborhood business zoning, across the street from a regional riverside trail and near the SR 169 arterial, the location is suitable for multi-family development.

3. The conditions of approval recommended by the Department respond appropriately to site conditions, except as noted in Conclusion No. 4, following. The conditions addressing Metro Transit convenience, traffic light installation, public street improvement, historic house preservation and/or documentation, internal circulation and SR 169/I-405 mitigation are all supported by the preponderance of the evidence.
4. The potential for contamination resulting from the underground storage tanks discussed in Finding No. 11, above, should be investigated and addressed as necessary before site development.
5. As limited by the conditions recommended below, the requested reclassification should be approved. The City of Renton request to deny reclassification to R-12 should be rejected.
  - a. Although not part of an “affordable housing” program, the proposed development will indeed increase the housing stock in a manner that promotes affordable housing. The request is therefore consistent with King County Comprehensive Plan (KCCP) Policy U-101 and U-208.
  - b. Consistent with Policy U-203, the requested reclassification will encourage population and employment growth within a potential annexation area.
  - c. The hearing record contains insufficient information to determine whether the proposed reclassification is consistent with Policy U-502 (which establishes a goal to achieve over the next 20 years an average zoning density of at least 7 to 8 homes per acre in the UGA). However, as a neighborhood business center designated by the Council, Policy U-626 suggests that the property appropriately could carry up to 18 homes per acre—6 dwelling units per acre less than requested.
  - d. The City of Renton argues that the requested reclassification is not consistent with Policy U-515 because it will not “preserve neighborhood characteristics.” However, Policy U-515 does not address neighborhood characteristics. It encourages residential neighborhood design to “preserve historic and natural characteristics and neighborhood neatness...”. The historic Denny House will either be preserved or documented, consistent with County regulations. The steep slopes and wetlands along the south boundary of the subject property will be preserved. As to “neighborhood neatness,” the hearing record contains no evidence.
  - e. Policy U-517 addresses the drafting of zoning and subdivision regulations and is not relevant to this site review.
  - f. Policy U-523 addresses park land acquisition and dedication requirements. Whether it is relevant may be debatable. However, certainly, the wisdom of placing a multi-family development functionally convenient to the Cedar River Trail cannot be questioned.
  - g. Placing multi-family zoning adjacent to a neighborhood business center not only makes sense but implements Policies U-601 and U-624 through U-628.

- h. Although County-wide Planning Policies (CPPs) are written to guide Comprehensive Plan development, they may be used when interpreting Comprehensive Plan policy. In this case, applying the relevant CPPs tends to work against the Applicant's case because they support a) a requirement to have infrastructure in place, and b) a requirement that County and City plans within potential annexation areas be coordinated. However, the Applicant correctly argues that Polygon Northwest should not be held hostage to the City/County inability to reach agreement on matters of long range planning and zoning. Infrastructure issues are sufficiently addressed by the recommended conditions of approval stated below.

#### RECOMMENDATION:

GRANT approval of the requested reclassification from R-6 PSO (potential R-12 PSO) to R-12 PSO, subject to the following conditions:

1. The Applicant shall dedicate right-of-way as needed to the Washington State Department of Transportation, specifically for transit service improvements, as outlined in the letter dated August 31, 2000 from King County Metro Transit (Exhibit No. 27). This required dedication must be provided prior to any segregation of the property.
2. Mitigation measures from the threshold determination (MDNS), issued on July 28, 2000, shall apply as conditions to the subsequent commercial building permits. Mitigation measures are as follows:
  - The proponent shall design and install a traffic control signal at the State Route 169/152<sup>nd</sup> Avenue SE intersection. If the King County bridge and roadway realignment project (#400588) is still being considered, the signal shall be designed and constructed to facilitate the future north leg of the intersection.
  - Channelization, illumination, and signalization plans shall be prepared and implemented, in accordance with the Washington State Department of Transportation rules and regulations, by the proponent.
  - The proponent shall improve 152<sup>nd</sup> Avenue SE, per King County Road Standards, to allow three lanes of travel for a minimum of 150-feet from the intersection.
3. The Applicant shall coordinate with the Renton School District in providing adequate school bus access to serve the development of R-12 zoned property by providing one of the following improvements, which are listed in order of preference:
  - Providing a school bus pull out on SR 169 to be implemented as part of the commercial building permits for development of this site. Such a pull out may be combined with proposed Metro Transit service improvements;
  - Providing a loop roadway/driveway (minimum of 24 feet) through the development;



or,

- Improving the existing cul-de-sac at the terminus of 152<sup>nd</sup> Avenue SE to allow for the turning radius of the largest school buses, approximately 55-60-foot outer radius.

This condition shall be implemented prior to occupancy of any dwelling units on the site.

4. Transit service improvements, as outlined in the letter dated August 31, 2000 from King County Metro Transit (Exhibit No. 27) shall be required as part of issuance of the commercial building permits for multi-family development.
5. The Captain Denny House shall be documented in accordance with the Historic Preservation Officer, prior to any site disturbance. The historic building(s) shall either: a) be relocated by the owner to another site, or b) the historic building(s) shall be advertised for sale, for at least a week starting at least 60 days, for a nominal sum and that the costs of demolition and disposal be donated to the purchasing party, prior to relocation/demolition. Provide all documentation (photographs, costs of demolition and disposal, advertisement, new location, etc.) to the Officer prior to relocation/demolition. This condition shall be carried over and applied to any future building permit, demolition permit, and/or clearing and grading permits.
6. Washington State Department of Transportation (WSDOT) and the City of Renton have identified State Route 169 as a HAC (High Accident Corridor) between MP 22.00 and MP 25.00. The City of Renton, with financial assistance from the WSDOT and King County, has adopted a transportation improvement project (the WSDOT project is referenced in the Applicant's May 11, 2000 revised traffic report) to improve operations along this portion of the State Route. The developer shall contribute their proportionate share to this project prior to issuance of any building permits, based upon worst case AM or PM peak hour volumes at the I-405 northbound ramps and net new peak hour trips from the site—of the costs identified for Project #12 (SR 169 HOV—140<sup>th</sup> Way SE to SR 900) in the City's 6-year Transportation Improvement Plan adopted July 10, 2000.
7. Retain the SO-22 special district overlay (SO) on the subject property.
8. Apply the area wide P-suffix condition of SC-P19a on the subject property.
9. Development shall be limited to a total of 250 apartment (multi-family) dwelling units on the R-12 zoned property.
10. Before building permit issuance, the four underground storage tanks on the property shall be investigated and addressed in the manner required by applicable regulatory standards.
11. These conditions shall be appended to the P-suffix conditions that already apply to the property.

ORDERED this 12<sup>th</sup> day of October, 2000.

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R. S. Titus, Deputy  
King County Hearing Examiner

TRANSMITTED this 12<sup>th</sup> day of October, 2000, to the following parties and interested persons:

Angus & Janette Carr  
DBM Consulting Engineers  
Roger Dorstad  
Denise Greer  
Russell & Marty Hendrickson  
Kevin & Paige Iden  
Kathryn Kennedy  
Joe Korbecki  
Rebecca Lind  
Eleanor Moon  
Betty Saffle  
Jim Shepard  
Gary Young  
Mark Jacobs

Craig J. Stone  
Larry Warren  
Gregg Zimmerman  
Justin Abbott  
James Chan  
Robert Eichelsdoerfer  
Curt Foster  
Michaelene Manion  
Mark Mitchell  
Karen Scharer  
Gordon Thomson  
Martin Durkin  
Robert Johns  
Larry Warren

NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of Finance) *on or before October 26, 2000*. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before November 2, 2000*. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

## ENVIRONMENTAL SERVICES FILE NO.L99TY403 – AQUA BARN:

R. S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department of Development and Environmental Services were Justin Abbott and Karen Scharer; also Robert Eichelsdoerfer of the King County Department of Transportation. Participating in the hearing and representing the Applicant were Attorney Robert Johns and Gary Young of Polygon Northwest. Other participants in this hearing were Interested Persons Joe Korbecki, Kathryn Kennedy and Russell Hendrickson; also Rebecca Lind, Greg Zimmerman, Jim Shepard and Attorney Larry Warren, all of the City of Renton; also Mark Jacobs and Martin Durkin, Applicant witnesses.

**The following exhibits were offered and entered into the record on September 14, 2000:**

- Exhibit No. 1 DDES Preliminary Report to the Examiner, dated August 31, 2000
- Exhibit No. 2 Addendum to Preliminary Report & Revised Recommendations, dated September 14, 2000
- Exhibit No. 3a. Application File No. L99TY403, filed October 29, 1999
- Exhibit No. 3b. Application File No. L99S3019, filed on October 29, 1999
- Exhibit No. 4 Environmental Checklist, dated August 24, 1999
- Exhibit No. 5 Mitigated Determination of Non-Significance (MDNS), issued July 28, 2000
- Exhibit No. 6 Affidavit of Posting indicating December 2, 1999 as date of posting and December 9, 1999 as the date the affidavit was received by DDES.
- Exhibit No. 7 Conceptual Site Plan, received October 29, 1999
- Exhibit No. 8 Rezone Map & Legal Description of Proposed Rezone Area
- Exhibit No. 9 Assessor Maps: STR SE 23-23-5, STR NW 26-23-5—revised April 7, 1994, and STR SW 23-23-5, revised on July 8, 1999.
- Exhibit No. 10 Notice of Applications, mailed December 2, 1999
- Exhibit No. 11 Notice of Recommendation and Hearing, mailed August 18, 2000
- Exhibit No. 12 Ordinance No. 13273 (L-7)(Z-7)
- Exhibit No. 13 Ordinance No. 98-349—Revised Staff Report as Reported Out of Committee
- Exhibit No. 14 Portion of zoning overlay from 1995 of the subject site.
- Exhibit No. 15 Phase I Environmental Site Assessment Report, by SECOR International Inc., dated May 4, 1998
- Exhibit No. 16 Wetland Delineation, by David Evans & Associates, dated August 12, 1999
- Exhibit No. 17 Wetlands, Streams and Wildlife Habitats Report, by Habitat Technologies, Inc., dated May 20, 2000.
- Exhibit No. 18 Traffic Impact Analysis, by Transportation Planning & Engineering, dated October 8, 1999 and revised May 11, 2000.
- Exhibit No. 19 Geotechnical Engineering Report, by Golder Associates, Inc., dated September 20, 1999
- Exhibit No. 20 Letter from Gary Young to WSDOT, dated June 23, 2000 regarding the revised Traffic Impact Analysis.
- Exhibit No. 21 King County Sensitive Areas Map (GIS) of Property (site marked in yellow)
- Exhibit No. 22 E-mail correspondence from Robert Eichelsdoerfer, sent on July 24, 2000
- Exhibit No. 23 Letter from Roberta Marta to DBM Consulting Engineers, dated May 25, 2000, clarifying the rezone request.
- Exhibit No. 24 Three (3) King County GIS maps showing Parks & Trails, Land Use and Potential Annexation Areas.
- Exhibit No. 25 E-mail received from Charlie Sundberg, King County Historic Preservation Officer, sent January 5, 2000.
- Exhibit No. 26 Development Condition Query Results for the subject property, showing all post-conversion conditions: KCC 16.82.150D, SO-220, SC-P3, SC-P19a and SC-P19
- Exhibit No. 27 Letter from Jim Jacobson to Metro Transit, dated August 31, 2000.
- Exhibit No. 28 Letter from Kevin Oleson to Renton School District 403, dated December 9, 1999
- Exhibit No. 29 Letter from Malcom McNaughton to Polygon Northwest, dated August 29, 2000
- Exhibit No. 30 U-625 from the 1994 Comprehensive Plan with 1998 updates (page 56)
- Exhibit No. 31 E-mail received on September 11, 2000 from Carolyn Boatsman to City of Renton Water Utility.
- Exhibit No. 32 Ordinance No. 12531, dated June 5, 1996
- Exhibit No. 33 Handwritten draft of proposed mitigation changes to staff report addendum, submitted by Mr. Johns.
- Exhibit No. 34a. Written testimony with attachments *offered but not entered*., submitted by Rebecca Lind, City of Renton Principal Planner
- Exhibit No. 34b. Ten attachments to Exhibit No. 34a.
- Exhibit No. 35 Written testimony, submitted by Kathryn Kennedy

**The following exhibits were offered and entered into the record on September 26, 2000:**

- Exhibit No. 36 Traffic concurrency certificate and attached cover letter, both dated September 6, 2000
- Exhibit No. 37 Letter from Chief Wheeler, City of Renton Fire Department, to the Examiner, dated September 26, 2000 regarding the Elliott Bridge, submitted by Mr. Warren
- Exhibit No. 38 Grid titled "Response to Applicant's Questions on Renton's Jobs to Housing Ratio", submitted by Ms. Lind
- Exhibit No. 39 Grid titled "Response to Applicant's Capacity/Forecast Justification for Proposed Rezone", submitted by Ms. Lind
- Exhibit No. 40 Plat Density and Dimension Calculations document, dated October 27, 1999, submitted by Ms. Lind
- Exhibit No. 41 Letter from Roberta Marta, DBM Consulting Engineers, to Justin Abbott of DDES, addressing density, dated June 22, 2000
- Exhibit No. 42 SEPA document transmittal form with attached party of record list, submitted by Mr. Abbott
- Exhibit No. 43a. Notice of Application, mailing date December 2, 1999, submitted by Mr. Abbott
- Exhibit No. 43b. Party of record list corresponding with Exhibit 43a, submitted by Mr. Abbott
- Exhibit No. 44a. Notice of Recommendation and Hearing, mailing date August 18, 2000, submitted by Mr. Abbott
- Exhibit No. 44b. Party of record list corresponding to Exhibit 44a
- Exhibit No. 45 E-mail communication between Kevin Oleson and Justin Abbott regarding bus route
- Exhibit No. 46 E-mail communication from Charlie Sundberg regarding historical building
- Exhibit No. 47 King County GIS map showing fire stations within vicinity of subject property, submitted by Mr. Abbott
- Exhibit No. 48 Revised staff recommendations 5 and 8, with handwritten annotations, submitted by Ms. Scharer
- Exhibit No. 49 Copies of code citations 20.08 and 20.10, submitted by Ms. Scharer
- Exhibit No. 50 E-mail communication between Paul Reitenbach and Karen Scharer regarding interlocal agreement, dated September 18 and 19, 2000
- Exhibit No. 51 Letter to Aron Golden of Polygon Northwest from Mark Jacobs of TP & E, dated September 25, 2000
- Exhibit No. 52 Letter to Hearing Examiner Titus from Robert Johns, addressing Applicant's response to City of Renton testimony, dated September 26, 2000

RST:sje

Rezone/L99TY403 RPT